No. 94-23

FILED

JAN 23 1995

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

CITY OF EDMONDS,

Petitioner,

v.

WASHINGTON STATE BUILDING CODE COUNCIL, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF THE NATIONAL FAIR HOUSING ALLIANCE AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

TIMOTHY C. HESTER
ROBERT A. LONG, JR.*
CHRISTINA T. UGLESICH
COVINGTON & BURLING
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-6000

* Counsel of Record

BEST AVAILABLE COPY

QUESTION PRESENTED

Whether a municipality's definition of a "family" in a single-family zoning ordinance is a restriction on "the maximum number of occupants" exempted from the requirements of the Fair Housing Amendments Act, even though a single-family zoning ordinance is a use requirement with a distinct history and purpose from the occupancy restrictions denoted by the plain language and history of the Act.

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INTEREST OF AMICUS CURIAE

The National Fair Housing Alliance ("NFHA") is a nonprofit corporation that represents over sixty private, non-profit fair housing councils or centers throughout the United States. The NFHA seeks to identify and eliminate practices that constitute barriers to equal access to housing for all classes of persons

protected under the Fair Housing Act, including persons with disabilities, by researching the nature and effects of housing discrimination and acting as an advocate for effective programs of fair housing enforcement and compliance. Efforts to secure housing for persons with disabilities often face community opposition, based on unfounded fears and negative attitudes about such individuals. The NFHA provides advice to members who are facing opposition to the location of group homes, and has made many referrals to the Department of Justice regarding actions taken by municipalities and local planning commissions to prohibit or restrict housing for persons with disabilities. Accordingly, the issue presented in this case — the scope of the exemption from the Fair Housing Act for reasonable occupancy standards — is one of great importance to NFHA and its members.

SUMMARY OF ARGUMENT

Zoning ordinances and housing codes developed as distinct responses to different problems of population growth. As a result, they are both historically and substantively different. In this case, the Court must determine whether a single-family zoning ordinance is exempt from the Fair Housing Amendments Act as a "reasonable restrictio[n]" on the "maximum number of occupants." 42 U.S.C. § 3607(b)(1) (1988). An historical perspective shows that zoning ordinances are entirely distinct from the occupancy standards contemplated by the statutory exemption.

1. The explosion of immigration a century ago created unprecedented urban problems. Zoning emerged as a means of easing these pressures by separating incompatible uses. It also became a tool for communities — particularly suburban ones — to exclude uses and groups they deemed undesirable. For decades, communities used zoning to exclude minorities. More recently, they have used zoning to exclude the disabled. Courts and legislatures have consistently sought to counter these improper uses of the zoning laws. Pp. 5 to 17.

2. Housing codes, which typically include occupancy restrictions, have a different origin, in tenement house reform. They are aimed at protecting the health and safety of the inhabitants of buildings, rather than separating different uses of buildings or land. Federal funds offered to spur urban redevelopment led cities and towns nationwide to adopt housing codes that ordinarily included occupancy restrictions. Pp. 17 to 21.

3. Zoning's basic tool is exclusion or separation, and its hallmark is the "use restriction." Occupancy codes focus on the objective relationship between the size of a dwelling and the number of occupants it can accommodate. Thus, zoning codes are far more susceptible to discriminatory purposes or enforcement that are housing codes; and zoning codes have historically been used to discriminate against groups a community wants to exclude, in ways that housing codes and occupancy standards have not. Pp. 22 to 24.

4. The Fair Housing Amendments Act protects the disabled and other groups against discrimination in housing, subject to an exemption for reasonable occupancy restrictions. The plain language of the statutory exemption, particularly when read in light of the longstanding distinction between zoning laws and occupancy restrictions, does not apply to use restrictions such as the zoning ordinance at issue here. The Act's remedial purpose and legislative history confirm this conclusion. Pp. 25 to 29.

ARGUMENT

This case presents the Court with a straightforward issue of statutory interpretation. The City of Edmonds contends that it is entitled to exclude a group home for individuals who qualify as handicapped under the Fair Housing Amendments Act of 1988 ("FHAA") from a neighborhood zoned for single-family use, on the ground that the City's definition of "family" in its single-family zoning ordinance, ECDC § 21.30.010 (J.A. 250), is a "reasonable . . . restrictio[n] regarding the maximum number of occupants

permitted to occupy a dwelling" that is exempt from the requirements of the FHAA, 42 U.S.C. § 3607(b)(1) (1988). The Ninth Circuit has held that Edmonds' single-family definition is not a maximum occupancy restriction and is subject to the FHAA. *City of Edmonds* v. *Washington State Bldg. Code Council*, 18 F.3d 802 (9th Cir. 1994). The Eleventh Circuit reached the contrary conclusion in an earlier case. *Elliott* v. *City of Athens*, 960 F.2d 975 (11th Cir. 1992).

In determining what the "plain language" of a statute means, the Court looks not only to the meaning of the words in ordinary usage but also to what meaning is "most compatible with the surrounding body of law into which the provision must be integrated." *Green* v. *Bock Laundry Machine Co.*, 490 U.S. 504, 528 (1989) (Scalia, J., concurring). This is so because "[s]tatutory construction 'is a holistic endeavor' . . . and, at a minimum, must account for a statute's full text, language as well as punctuation, structure, and subject matter." *United States Nat'l Bank* v. *Indep. Ins. Agents of America, Inc.*, 113 S. Ct. 2173, 2182 (1993) (quoting *United Savings Ass'n* v. *Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988)); *see also id.* at 2182 ("Over and over we have stressed that '[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'") (quoting *United States* v. *Heirs of Boisdore*, 49 U.S. (8 How.) 113, 122 (1849)).

Amicus NFHA will show that the Edmonds zoning ordinance has a distinct history and purpose from the "occupancy restrictions" contemplated by the FHAA's exemption: occupancy restrictions are addressed to concerns for the health and safety of people where they live, and are thus qualitatively different from zoning laws, which address concerns of separating land uses or deciding who may live where. The Ninth Circuit's interpretation — which recognizes that zoning laws and occupancy restrictions are two distinct modes of regulation, and which properly takes into account the "object and

policy" of the FHAA — is the only sensible reading of the statutory exemption.

I. ZONING FOR SINGLE-FAMILY USE IS A PREVALENT MEANS OF LAND USE PLANNING THAT, ALTHOUGH A USEFUL AND LEGITIMATE TOOL, HAS A RECOGNIZED HISTORY AS A MEANS OF EXCLUDING "UNDESIRABLE" GROUPS.

A. Zoning Arose as a Means For Municipalities To Separate Disparate Uses, In Response to Unprecedented Population Pressures.

A century ago, the Nation's cities were growing at an unprecedented pace. The urban population of the United States grew sevenfold from 1860 to 1910, while the rural population grew only twofold. Chicago's population doubled between 1880 and 1890 alone. *See* R. Hofstadter, *The Age of Reform* 173 (1955). As cities burst their seams, early zoning efforts in the United States tried to relieve the mounting pressure. These efforts focused on separating incompatible uses, such as removing noxious industries from residential areas.[1/] For example, this Court in 1915 upheld an ordinance prohibiting a livery stable in a particular area, *see Reinman* v. *Little Rock*, 237 U.S. 171 (1915), and another that barred the operation of a brickyard or brick kiln within certain parts of Los Angeles, *Hadacheck* v. *Sebastian*, 239 U.S. 394 (1915). Early attempts to go beyond this sort of "nuisance control," such as restrictions of commercial activity in residential areas, were generally held invalid as interferences with lawful uses of land. *See* N. Williams Jr. & J. Taylor, 1 *American Land Planning Law* § 5.02 (1988 rev. ed.).

1/ Indeed, American colonies began to control the location of industries likely to create nuisances as early as the 1690s. *See* 8 E. McQuillan, *Municipal Corporations* § 25.03, at 11 (3d rev'd ed. 1991).

The reluctance of the courts to permit zoned uses of land, however, did not alter the fundamental problem — and cities needed solutions. Following European examples,[2/] New York City forged ahead, passing the nation's first comprehensive zoning plan in 1916. Its zoning ordinance survived challenge in the courts of that state four years later, as "a proper exercise of the police power." *Lincoln Trust Co.* v. *Williams Bldg. Corp.*, 229 N.Y. 313, 317, 128 N.E. 209, 210 (1920). When Baltimore tried to follow suit, on the other hand, the high court of Maryland struck down its ordinance. *Goldman* v. *Crowther*, 147 Md. 282, 128 A. 50 (1925).

The question came before this Court only a few years later in *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926). In 1903, Euclid was a newly incorporated agricultural village on the outskirts of Cleveland; scarcely two decades later, Euclid saw the need to

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2/ European cities had been subject to comprehensive planning long before American cities. American planners were particularly influenced by the German experience; beginning early in the nineteenth century, Prussian initiatives in city building had, by the turn of that century, created exemplars of zoning and planning. S. Toll, *Zoned American* 125-40 (1968). One influential early commentator on zoning believed that the German model was followed without due consideration for the differences between Germany and the United States. Ernest Freund, author of *The Police Power* (1904), was in a position to know; educated in Germany, he immigrated to this country and became a professor of law at the University of Chicago in the field of public law. He felt that "in Germany property is conservative, and in this country it is not. Therefore, the districting power in Germany means that it simply registers conditions that are more or less permanent; in this country, it would mean that the city would impose a character upon a neighborhood which that neighborhood, in the course of time, would throw off." S. Toll, *supra*, at 138 (quoting E. Freund, *Proceedings of the Third National Conference on City Planning* 245 (1911)). Other planners rejected Freund's conclusion that cities should not be given the power to control development as too capricious to foresee; they believed that rapid change made zoning powers all the more urgent. *Id.* at 139. At the core of this debate lies an insight about zoning in the American tradition: it is a bulwark against change, and a tool to keep out unwanted influences.

defend itself against the advancing city. *See* S. Toll, *supra*, at 214-16. It did so by zoning. As the landowner challenging the zoning plan saw it, the ordinance "[i]n effect . . . erects a dam to hold back the flood of industrial development and thus to preserve a rural character in portions of the Village which, under the operation of natural economic laws, would be devoted most profitably to industrial undertakings." *Euclid*, 272 U.S. at 371.

This Court upheld the ordinance as a valid exercise of the police power. Noting that "'[t]he constantly increasing density of our urban populations, the multiplying forms of industry and the growing complexity of our civilization make it necessary for the State . . . to limit individual activities to a greater extent than formerly,'" *id.* at 392 (quoting *City of Aurora* v. *Burns*, 319 Ill. 84, 93 (1925)), the Court concluded that the advantages of separating residential, business, and industrial uses gave the ordinance a substantial relation to the public health, safety, morals, and general welfare, *id.* at 394-95. The Court illustrated its reasoning with the example of an apartment building in a neighborhood of detached houses:

> [I]n such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surrounding created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities,—until, finally, the residential character of the

> neighborhood and its desirability as a place of detached residences are utterly destroyed.

Id. at 394. The Village of Euclid, then, was free to protect itself against such encroachments from the outside.

The *Euclid* decision was a clarion call for evolving suburban communities across the country. Despite the efforts of cities to combat the problems of immigration, many of their citizens solved the problem more simply: by moving to the suburbs. The suburbs themselves were something of a new phenomenon, made possible by short-haul passenger rail and the automobile. *See* K. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* 91-92 (1985); S. Toll, *supra*, at 190-94; S.B. Warner, Jr., *Streetcar Suburbs* 14 (1978). As one commentator put it, *Euclid* "cleared the way for similarly sited communities to limit population and ward off the evils of urbanization . . . . Zoning out, or segregating, the city's most distasteful uses could help ensure that the escape to the suburbs would not mean facing again the problems left behind." M.A. Wolf, *The Prescience and Centrality of Euclid v. Ambler*, in *Zoning and the American Dream* 252, 261-62 (C. Haar & J. Kayden eds., 1989).

Today, almost all American cities (with the renowned exception of Houston), incorporated towns, and many smaller communities have zoning ordinances of some kind. 8 McQuillin, *Municipal Corporations*, § 25.04 at 13 (3d rev'd ed. 1991); 1 N. Williams, *supra*, § 16.01 at 434. Single-family districts — which comprise most or all of the residential and vacant areas in many communities — are a prominent feature of such ordinances. *See* 1 N. Williams, *supra*, § 16.14 at 441. While there do not appear to be nationwide statistics on the percentage of the nation's housing stock zoned for single-family use, the 1990 Census reports that 59% of housing units in the United States are detached single-family houses. Bureau of the Census, U.S. Dep't of Commerce, *1990 Census of Housing: General Housing Characteristics: United States*, Table 15, at 19 (1992). Many of them — like the City of Edmonds — describe

their zoning plans as "Euclidian." *See* Petitioners' Brief on the Merits at 8.

B. Zoning Was Also Used To Exclude "Undesirable" Groups, Such as Racial and Ethnic Minorities, From New Suburban Communities.

The urge to escape the "distasteful" aspects of city life was not a wholly benign response to a completely objective problem. The character of the city's new population was an issue as well. Southern and Eastern Europe supplied much of the vast flood of immigration in the last decades of the nineteenth century and the first decades of this one, and the new immigrants — linguistically, ethnically, and religiously unlike more established inhabitants — were not warmly welcomed. Wolf, *supra*, at 255-56. Henry James expressed a common view of one such group of immigrants, in New York:

> [I]t was the sense, after all, of a great swarming, a swarming that had begun to thicken, infinitely, as soon as we had crossed to the East side and long before we had got to Rutgers Street. There is no swarming like that of Israel when once Israel has got a start, and the scene here bristled, at every step, with the signs and sounds, immitigable, unmistakable, of a Jewry that had burst all bounds.

H. James, *The American Scene* 131 (1968). At the same time, Southern blacks began to migrate from tenant farms to Northern cities. White commuting to the suburbs rose. K. Jackson, *supra*, at 150 (1985).

Indeed, zoning was often used directly to regulate which races should live where. *See generally* 2 Williams, *supra*, ch. 59. In a particularly egregious example, San Francisco in 1890 passed an ordinance requiring all Chinese to move from their homes (generally, within what is now Chinatown) to a different designated

area within the city, or out of the city entirely. An American of Chinese descent challenged the ordinance under the Constitution and a U.S.-China treaty. A federal district judge put his holding in no uncertain terms: "The discrimination against Chinese . . . in violation of the constitutional, treaty, and statutory provisions cited, are so manifest upon its face, that I am unable to comprehend how this discrimination and inequality of operation, and the consequent violation of the express provisions of the constitution, treaties and statutes of the United States, can fail to be apparent to the mind of every intelligent person, be he lawyer or layman." *In re Lee Sing*, 43 F. 359, 360 (C.C.D. Cal. 1890).

Elsewhere in the country, zoning directed against African Americans was not always perceived so clearly. While a North Carolina court held a racial zoning ordinance invalid as a revolutionary public policy that would require full legislative consideration, *see State* v. *Darnell*, 166 N.C. 300, 81 S.E. 338 (1914), such ordinances — carefully drafted to be, on their face, equally burdensome to whites and blacks — were upheld elsewhere. *See, e.g., State* v. *Gurry*, 121 Md. 534, 88 A. 228 (1913); *Harris* v. *City of Louisville*, 165 Ky. 559, 177 S.W. 472 (1915). Reversing *Harris* v. *City of Louisville*, this Court made clear that racial zoning was intolerable. *Buchanan* v. *Warley*, 245 U.S. 60 (1917).

More subtle approaches followed. As this Court and others insisted that subterfuges were fully as impermissible as openly zoning for race, *see, e.g., Tyler* v. *Harmon*, 158 La. 439, 104 So. 200 (1925), 160 La. 943, 107 So. 704 (1926), *rev'd per curiam*, 273 U.S. 668 (1927),[3] segregation in housing was maintained

[3] Cities nevertheless attempted to enact various racial zoning ordinances through the next quarter-century. The last major case on direct racial zoning arose from a Birmingham, Alabama, ordinance that zoned 16% of the city for occupancy by Negroes, who then constituted about 40% of the city's residents. *See Monk* v. *City of Birmingham*, 87 F. Supp. 538 (D. (continued...)

through private devices, such as racially restrictive covenants. *See* 2 N. Williams, *supra*, at § 59.06. In time, racially restrictive covenants were also struck down. *Shelley* v. *Kraemer*, 334 U.S. 1 (1948).[4]

As more obvious approaches to racial zoning have been invalidated, however, localities have found that "any land use controls which limit housing to more expensive housing types may be an efficient means of keeping out members of . . . minorities . . . . The variety of land use policies and devices which are adaptable for this purpose is almost infinite." 2 N. Williams, *supra*, § 59.06 at 750; *see also* D. Mandelker, *Land Use Law* § 7.01 at 317 (3d ed. 1993) ("Exclusionary suburban zoning is a well-known and notorious phenomenon. Suburban municipalities exclude multi-family developments, require low residential densities, and adopt other exclusionary restrictions . . . . This type of zoning excludes low- and moderate-income groups.")

Against this background, Congress passed the Fair Housing Act in 1968 ("FHA"). There, Congress sought to combat the problem of racial segregation in housing on all fronts: state policies, municipal ordinances, and private practices alike. 42 U.S.C. §§ 3601-3619 (1988); R. Schwemm, *Housing Discrimination: Law and Litigation* at 1-1 (1994) (the passage of the FHA marked the first time that "legal tools became available to attack all forms of

[3](...continued)
Ala. 1949), *aff'd*, 185 F.2d 859 (5th Cir. 1950), *cert. denied*, 341 U.S. 940 (1951).

[4] Like the racial-zoning decisions, the holding in *Shelley* did not meet with immediate acquiescence. The State of California attempted to amend its constitution to forbid any restriction on the rights of real-property owners to refuse to sell, lease, or rent their property to any other. Affirming the Supreme Court of California, this Court invalidated the provision under the equal protection clause of the Fourteenth Amendment. *Mulkey* v. *Reitman*, 413 P.2d 825 (Cal. 1966), *aff'd*, 387 U.S. 369 (1967).

housing discrimination"). But local governments have continued to use the zoning power to maintain racial segregation. R. Schwemm, *supra*, § 13.4(3)(a) at 13-24.1; *see also* Note, *Developments in the Law--Zoning*, 91 Harv. L. Rev. 1427, 1624-1708 (1978). For example, a common means by which communities have made "housing . . . 'unavailable' in violation of [the Fair Housing Act] is [by using] their zoning or other land-use powers to block construction of housing projects that are likely to include racial minorities or other classes protected by Title VIII.'" R. Schwemm, *supra*, § 13.5(3)(a) at 13-24.1.

Under the Fair Housing Act, courts have recognized and refused to condone such abuses of the zoning power. *See*, *e.g.*, *United States* v. *Yonkers Bd. of Educ.*, 837 F.2d 1181, 1216-26 (2d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988); *Arthur* v. *City of Toledo*, 782 F.2d 565, 575 n.3 (6th Cir. 1986); *Atkins* v. *Robinson*, 733 F.2d 318, 321 (4th Cir. 1984); *United States* v. *City of Birmingham*, 727 F.2d 560, 563, 65 (6th Cir.), *cert. denied*, 469 U.S. 821 (1984); *Smith* v. *Town of Clarkton*, 682 F.2d 1055, 1065-67 (4th Cir. 1982). Indeed, courts have overturned exclusionary zoning practices even where there is no proven discriminatory intent — but where the zoning practices would have a disproportionate impact on a protected class and are not supported by a substantial justification. *See*, *e.g.*, *Huntington Branch, NAACP* v. *Town of Huntington*, 844 F.2d 926, 937 (2d Cir.) ("Though a town's interests in zoning requirements are substantial, they cannot, consistently with Title VIII, automatically outweigh significant disparate effects.") (citations omitted), *aff'd per curiam*, 488 U.S. 15 (1988).

C. Single-Family Zoning Has a Long and Well-Recognized History as a Means of Excluding Disabled People Who Require Congregate Living Arrangements.

The FHA focused on discrimination against racial, ethnic, and religious minorities. Members of these groups, however, were not the only Americans who found themselves locked out of certain

communities in their own country. As the deinstitutionalization movement[5/] struggled to integrate disabled people into communities, frightened neighbors sought to shut them out. *See* G. Tuoni, *Deinstitutionalization and Community Resistance by Zoning Restrictions*, 66 Mass. L. Rev. 125 (1981). The favorite tool of exclusion was, once again, zoning. *See id.*; P. Rohan, 1 *Zoning and Land Use Controls* at § 3.05[7][a][i] (1994) ("Progress towards normalization for various types of people dependent upon society has sometimes been impeded by local zoning regulations that exclude group homes from residential areas.").

While some communities have employed techniques aimed directly at excluding or limiting group homes, such as bans in certain areas or stringent requirements for conditional use permits, communities have most commonly sought to exclude group homes from residential districts through restrictive definitions of the word "family." 1 Rohan, *supra*; *see also id.* n.206 (citing state court cases concerning the application of restrictive definitions of "family" to various facilities); 8 McQuillin, *supra*, at § 25.128.15. "Typically, the local zoning ordinance will designate certain areas of the municipality as 'single family residential' zones either expressly prohibiting group homes or imposing burdensome special conditions upon such uses. The exclusionary nature of these zones is often premised upon restrictive definitions of 'family' which limit occupancy in such zones to persons related by blood, marriage or adoption." L. Steinman, *The Impact of Zoning on Group Homes for the Mentally Disabled: A National Survey*, 19 The Urban Lawyer 1, 2 (1987).

5/ The "deinstitutionalization movement" began in response to research showing that many people with mental and other disabilities are ill-served by institutions, and are more likely to achieve productive lives and therapeutic success when they live in the wider community. *See generally* Brief of the American Association on Mental Retardation, *et al.*, as Amici Curiae in Support of Respondents [hereinafter Brief of the AAMR].

Another commentator has remarked: "In states where statutes do not totally pre-empt municipalities from regulating community residences, municipalities have enacted ordinances that have the effect of excluding some community residences from areas zoned for single family use. These ordinances accomplish that purpose by using a restrictive definition of the term 'family' for zoning purposes." R. Schonfeld, *"Five-Hundred-Year Flood Plains" and Other Unconstitutional Challenges to the Establishment of Community Residences for the Mentally Retarded*, 16 Fordham Urb. L.J. 1, 14 (1988) [hereinafter Schonfeld, *Unconstitutional Challenges*]. *See also* Note, *Group Homes and Deinstitutionalization: The Legislative Response to Exclusionary Zoning*, 6 Vt. L. Rev. 509, 509-510 (1981) (single-family zoning, "which has become known as exclusionary zoning, is the barrier group homes most frequently confront").

Although these ploys were taking place at the local level, they did not escape federal attention. In 1983, a few years before the passage of the FHAA, a General Accounting Office review identified single-family zoning as a serious obstacle to establishing group homes for the mentally disabled. *See* General Accounting Office, *An Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes For the Mentally Disabled* (Aug. 17, 1983). That review illustrated how zoning requirements can prevent or add unnecessary costs to the establishment of such homes. In one example, the sponsor of a group home near Odessa, Texas, reported that he had located the home outside the city limits because of the restrictive definition of "family" found in the city's zoning ordinance. *Id.* at 14. The survey also reported the comment of the Texas Association for Retarded Citizens that "zoning and land-use restrictions in Texas forced group homes to locate outside city limits, away from the community, transportation, jobs, or services, or cluster in areas that could be called 'mentally disabled districts,'" and that these restrictions operated to limit "integration of the mentally disabled into the community." *Id.* at 15.

State courts and legislatures recognized and acted upon the need for community residences for the disabled, and the intense local resistance to such residences, well before Congress did. In 1978, New York's legislature found neighborhood opposition to establishment of community residences for the mentally disabled so severe that it enacted a statute to redress the problem. Among other measures, the statute limits the participation of municipalities in selecting sites for community residences, and expressly declares that residences established according to its terms are "single-family residences" for local zoning purposes. *See* 1990 N.Y. Laws ch. 468 § 2; *see also generally* R. Schonfeld, *"Not in My Neighborhood": Legal Challenges to the Establishment of Community Residences for the Mentally Disabled in New York State*, 13 Fordham Urb. L. J. 281 (1985) (discussing statute's impact on the establishment of group homes). Before the statute was passed, a number of New York courts had already declared that group residences that functionally resembled families qualified for inclusion in "single-family" zones. *See, e.g., Little Neck Community Ass'n* v. *Working Org. for Retarded Children*, 52 A.D.2d 90, 383 N.Y.S.2d 364 (2d Dep't 1976), *leave to appeal denied*, 40 N.Y.2d 803, 356 N.E.2d 482, 387 N.Y.S.2d 1030 (1988); *Incorporated Village of Freeport* v. *Association for the Help of Retarded Children*, 94 Misc. 2d 1048, 406 N.Y.S.2d 221 (1977), *aff'd*, 60 A.D.2d 644, 400 N.Y.S.2d 724 (2d Dep't 1977). *But cf. People* v. *Renaissance Project, Inc.* 36 N.Y.2d 65, 364 N.Y.S.2d 885, 324 N.E.2d 355 (1975) (holding that a half-way house connected with a narcotics rehabilitation program violated a zoning ordinance prohibiting more than five unrelated individuals from maintaining a single housekeeping unit in a single-family residential zone). Both New York's courts and its legislature, then, expressly recognized and responded to the use of single-family zoning ordinances as a means of excluding disabled people in need of congregate living arrangements.

By 1988, the year that the FHAA was passed into law, many state legislatures had enacted statutes to govern the establishment of community residences for the mentally disabled, and most of those

statutes expressly provided that such residences could be placed in areas zoned for single-family use. *See* R. Schonfeld, *Unconstitutional Challenges*, *supra*, at 10-11 (citing state statutes).[6/] As of 1994, thirty-four states had passed legislation limiting or preventing the use of zoning or restrictive covenants to exclude community group homes.[7/] These statutes have differing scopes and restrict municipalities in varying ways; for example, many provide protection to group homes for the mentally disabled

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[6/] At the same time, however, many of these statutes place restrictions on group homes, including limitations on the number of occupants who may live in them. *See id.* at 11-15.

[7/] *See* Ariz. Rev. Stat. Ann. §§ 36-581, 36-582 (1986); Cal. Welf. & Inst. Code §§ 5115-5117 (West 1985); Colo. Rev. Stat. Ann. §§ 30-28-115, 31-23-303 (1977 & Supp. 1985); Con. Gen. Stat. Ann. § 8-3e (West Supp. 1986); Del. Code Ann. tit. 9, § 4923 (Supp. 1984); Fla. Stat. Ann. § 163.3177(6)(f) (West Supp. 1986); Hawaii: Act Relating to Domiciliary Care, No. 272, 1985 Hawaii Sess. Laws 575; Idaho Code §§ 67-6530 to 6532 (1980); Ind. Code Ann. §§ 16-13-21 to 22 (Burns Supp. 1985); Iowa Code Ann. §§ 358A.25, 414.22 (West Supp. 1986); La. Rev. Stat. Ann §§ 28:475 to 478 (West Supp. 1986); Me. Rev. Stat. Ann. tit. 30, § 4962-A (Supp. 1985); Md. Health-Gen. Code Ann. §§ 7-101 to 414 (1982 & Supp. 1985); Mich. Comp. Laws Ann. §§ 125.216a, 125.286a, 126.583b (West Supp. 1985); Minn. Stat. Ann. §§ 245.812, 462.357 (West Supp. 1986); 1985 Mo. Laws 398; Mont. Code §§ 76-2-401 to 412 (1985); Neb. Rev. Stat. §§ 18-1744 to 1747 (1983); Nev. Rev. Stat. § 278.021 (1983); N.J. Stat. Ann. §§ 40:55D-66.1 to 66.2 (West Supp. 1986); N.M. Stat. Ann. § 3-21-1(c) (1985); N.Y. Mental Hygiene Law § 41.34 (McKinney Supp. 1986); N.C. Gen. Stat. § 168-21 to 23 (1982 & Supp. 1985); N.D. Cent. Code § 25-16-14(2) (Supp. 1985); Ohio Rev. Code Ann. § 5123.19 (Page Supp. 1985); Or. Rev. Stat. §§ 418.950 to .970, 443.205 to 225, 443.580 to .600 (1985); R.I. Gen. Laws §§ 34-4-25, 45-24-22 to 23 (1980 & Supp. 1985); S.C. Code Ann. §§ 6-7-830, 44-7-510, 44-21-525 (Law Co-op & Supp. 1984); Tenn. Code Ann. §§ 13-24-101 to 104 (1980); 1985 Tex. Sess. Law Serv. ch. 303 (Vernon); Utah Code Ann. §§ 10-9-2.5, 17-27-11.7 (Supp. 1985); Vt. Stat. Ann. tit. 24, § 4409(d) (Supp. 1985); Va. Code § 15.1-486.2 (1981 & Supp. 1986); W. Va. Code §§ 8-24-50b(a), 27-17-1 to 4 (Supp. 1985); Wis. Stat. Ann §§ 46.03(22), 59.97(15) (West 1979 & Supp. 1985).

but do not apply to self-governing homes for recovering alcoholics, such as the Oxford House. *See* 1 Rohan, *supra*, § 3.05[7] at 3-352 to 3-355 & nn. 230-239 (discussing differences among various state statutes of this kind). *See generally* Hopperton, *State Legislative Strategy for Ending Exclusionary Zoning of Community Homes*, 19 Urban L. Ann. 47 (1980).

This Court has previously recognized that zoning ordinances can be impermissibly deployed as a tool to exclude the disabled from a given community. In *City of Cleburne* v. *Cleburne Living Ctr. Inc.*, 473 U.S. 432 (1985), the Court invalidated under the Equal Protection Clause a municipal zoning ordinance prohibiting group homes for the mentally retarded while allowing other similar homes. It held that the difference in treatment between the two similar classes of homes was not rationally related to any legitimate municipal purposes. It recognized that community opposition to such homes was based on negative attitudes and unsubstantiated fears, and held that such biases could not justify the ordinance. *Id.* at 448-50. While the Court distinguished single-family zoning ordinances on the ground that they are at least facially neutral, *id.* at 439 n.8, *Cleburne* demonstrates that zoning ordinances are a well-known means by which communities may try to exclude group homes that they deem undesirable.

II. PROVISIONS GOVERNING MAXIMUM NUMBERS OF OCCUPANTS DEVELOPED IN RESPONSE TO CONCERNS ABOUT THE HEALTH AND SAFETY OF THOSE ACTUALLY LIVING IN BUILDINGS RATHER THAN CONCERNS ABOUT WHO SHOULD LIVE IN A GIVEN COMMUNITY.

Occupancy codes emerged in response to a different consequence of the same ferocious urban growth that fueled the development of zoning laws. The cities fled by new suburbanites remained swollen with new immigrants; the condition of the slums

they lived in provoked a national outcry.[8/] A New York legislative report of 1857 described contemporary tenements as scenes of

> hideous squalor and deadly effluvia; the dim, undrained courts oozing with pollution; the dark, narrow stairways, decayed with age, reeking with filth, overrun with vermin; the rotted floors, ceilings begrimed, and often too low to permit you to stand upright; the windows stuffed with rags . . . the gaunt, shivering forms and wild ghastly faces, in these black and beetling abodes.

L. M. Friedman, *Government and Slum Housing: A Century of Frustration* 28 (1968); *see also* C.D. Wright, *The Slums of Baltimore, Chicago, New York, and Philadelphia*, House of Representatives, Executive Document No. 527, 7th Special Report of the U.S. Commissioner of Labor, 1894. Occupancy restrictions, along with other aspects of housing and building codes, were attempts to alleviate these appalling conditions.

Housing codes were not an entirely new development. The first housing codes in the United States attempted to reduce the risk of fire — for example, a 1766 law required all dwellings in certain densely populated areas to be made of stone or brick, and roofed with tile or slate. Another law of the same era prohibited the storage of hay, straw, pitch, tar and turpentine in populated areas susceptible to fire. *See* L. M. Friedman, *supra*, at 25. Other than such attempts to prevent fire, however, dwellings were not regulated except to control public nuisances. *See* Program for the Study of Corruption in Local Government, U.S. Dep't of Justice,

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8/ The conditions of life in the tenements was a favorite topic of "muckraking" journalists and authors. Perhaps the finest example of such works on tenement life is Jacob Riis's classic *How the Other Half Lives* (1890). Riis himself came to this country in steerage as a penniless Danish carpenter, and became an influential and respected voice for social reform. *See* S. Toll, *supra*, at 21-22.

1 *Corruption in Land Use and Building Regulation: An Integrated Report of Conclusions* 13 (1979).

But the great nineteenth-century explosion of immigration to American cities made laissez-faire untenable. New York City, with its teeming tenements and recurrent epidemics of cholera, was the first to act. Its 1867 law governing tenement houses required them to meet minimum standards of health and safety; it obligated them to have fire escapes, ventilators, and adequate roofing; and it made some attempt to address overcrowding. Laws N.Y. 1867, ch. 908, *reprinted in* L. M. Friedman, *supra*, at 25. A number of other state and city governments followed suit. *Id.* at 26.

The tenement-house laws were no match for the slums, however. By 1901, conditions had, if anything, deteriorated. Again, New York acted first: it formed a Metropolitan Board of Health, and passed a new ordinance regulating tenement houses still more strictly. *See* L. M. Friedman, *supra*, at 34-36. That ordinance included provisions directly limiting the occupancy of tenement houses based on an objective relationship between the building's capacity and minimum human needs: "No room in any tenement house shall be so overcrowded that there shall be afforded less than four hundred cubic feet of air to each adult, and two hundred cubic feet of air to each child under twelve years of age . . . ." *Id.* at 34 (quoting Laws N.Y. 1901, ch. 334, § 112). This ordinance, aimed not restricting uses but at protecting occupants' health and safety, is the ancestor of today's occupancy codes.

The reforming impulse of the new century brought rapid development. Progressives called for more comprehensive, broader housing codes that would reach beyond tenement houses. *See generally* R. Lubove, *The Progressives and the Slums: Tenement House Reform in New York City 1890-1917* (1963). A pivotal figure was Lawrence Veiller, founder of the National Housing Association, who publicized the horrors of the slums and the cause of housing reform in books such as *Housing Reform* (1910), *A Model Tenement House Law* (1910), and *A Model Housing Law*

(1910). By 1920, eight states and twenty cities in other states had enacted comprehensive housing codes to deal with overcrowding and related problems, mostly modeled on the paradigms developed by Veiller and New York. L. M. Friedman, *supra*, at 39.

As housing codes developed, the problems of population pressures and overcrowding came to be understood as a social issue affecting entire communities. In 1937, for example, Pennsylvania passed a comprehensive Housing Authorities Act addressing a number of issues, including overcrowding:

> In 1937, the Pennsylvania legislature found the existence of unsafe, unsanitary, inadequate or overcrowded dwellings, . . . [and] overcrowding . . . . to be prejudicial to the welfare of the people because such conditions subject the moral standards of the people to bad influences which have permanent deleterious social affects, increase the violation of the criminal laws of the commonwealth and jeopardize the safety and well-being of the inhabitants, [and] necessitate the expenditure of vast sums of public money both by the commonwealth and local governmental bodies for the purpose of crime prevention, punishment and correction, fire and accident prevention, public health service and relief.

Preamble, 1937 Housing Authorities Act of Pennsylvania, *reprinted in* T. Gilhool, *Social Aspects of Housing Code Enforcement*, 3 Urban Lawyer 546, 546 (1971).

Housing codes became established nationwide through intervention of the federal government. The Housing Act of 1949, 63 Stat. 414, § 101(a) (1949), provided municipalities with funds for the redevelopment of urban areas, so long as they had implemented "positive programs . . . for preventing the spread or recurrence . . . of slums and blighted areas through the adoption, improvement, and modernization of local codes and regulations relating to land use and adequate standards of health, sanitation, and

safety for dwelling accommodations." By 1964, the conditions for federal funds had become still more stringent:

> No workable program shall be certified . . . unless (a) the locality has had in effect . . . a minimum standards housing code, related but not limited to health, sanitation, and *occupancy requirements*, which is deemed adequate by the Secretary of the Department of Housing and Urban Development, and (b) the Secretary is satisfied that the locality is carrying out an effective program of enforcement to achieve compliance with such housing code.

78 Stat. 785 (1964) (emphasis added). The lure of federal funds brought housing codes, including occupancy standards, to most communities in the nation. L.M. Friedman, *supra*, at 49.

In the wake of increasing criticism regarding the federal government's role in housing code enforcement, during the 1980s the government eliminated or reduced many of the federal programs that had spurred nationwide adoption of housing codes. *See* J.B. Cullingworth, *The Political Culture of Planning* 169 (1993). State and local governments have stepped in where the federal government stepped out; for example, even before the cutback of federal programs, many states began taking a more active role in enforcing statewide housing codes. *See* S. Paratt, *Housing Code Administration and Enforcement* viii-xi (1970). The impact of housing codes — including occupancy requirements — has thus taken on an increasingly local character, *see id.*, but such codes remain in force in most communities. The essential point remains that such housing codes are addressed not to separating the uses of land in particular areas but instead to basic concerns of health and safety for those who inhabit certain buildings.

III. BECAUSE OF THEIR HISTORY AS A MEANS OF EXCLUDING UNDESIRED USES, ZONING CODES ARE MORE SUSCEPTIBLE TO ABUSE AS TOOLS OF DISCRIMINATION AGAINST "UNDESIRABLE" INDIVIDUALS THAN ARE MAXIMUM OCCUPANCY RESTRICTIONS.

While zoning and occupancy codes both evolved out of problems arising from the population explosion of the late 1800s, they have different purposes and address distinct issues: zoning laws are aimed at controlling land use and preventing the incursion of unwanted influences into particular areas; while occupancy requirements are addressed to the health and safety concerns of ensuring minimal standards of access to space and air. Reflecting this distinction, occupancy restrictions typically appear in housing or building codes rather than in zoning codes. *See* F. Schnidman, S. Abrams, J. Delaney, *Handling the Land Use Case* § 1.5.3. at 30-31 ("Housing codes set minimum standards for the occupancy of residential dwellings. Their purpose is to safeguard the health and safety of occupants.") (1984); 8 McQuillin, *supra*, § 25.10 at 38 (distinguishing zoning from building codes and tenement codes); R. Schwemm, *Housing Discrimination: Law and Litigation* § 11.6(2)(b) at 11-86 (1994). Indeed, Edmonds' own regulation of maximum occupancy is through its adoption of the Uniform Housing Code. ECDC 19.10.000 (J.A. 248); Uniform Housing Code § 503(b) (J.A. 180-81).

In contrast, the "use restriction" is the hallmark of zoning. As the Kentucky Court of Appeals has explained:

> Although the noun "use" does not lend itself to the making of nice distinctions, we think that in one of its meanings it furnishes a basis for distinguishing between a zoning statute and a mere building code statute. Zoning has as one of its main purposes the regulation of the *use* of property. This means regulation of the purpose or the object of the use, rather than the mere conditions or circumstances of the use.

American Sign Corp. v. *Fowler*, 276 S.W.2d 651, 654 (Ky. 1955) (emphasis in original, citation omitted); *see also Enos* v. *City of Brockton*, 236 N.E.2d 919 (Mass. 1968) (differentiating between zoning and building codes on the ground that zoning regulates use); 1 E.C. Yokley, *Zoning Law and Practice* § 1-3 at 4 (4th ed. 1978) ("zoning is almost exclusively concerned with use regulation"); 8 McQuillin, *supra*, § 25.17 at 61 ("Zoning seeks to promote the public health, safety, morality and welfare by confining certain classes of buildings and uses to defined areas."). Even in the time of *Euclid* v. *Ambler*, zoning was understood as a set of use restrictions with an exclusionary purpose. *See* 272 U.S. at 380-81, 388; *see also* M.A. Wolf, *supra*, at 254 ("Exclusion is the essence of Euclidean zoning.").

Sadly, as discussed above in Part I, the definition of what and who should be excluded has not always been legitimate. While zoning serves important purposes, "local land use restrictions may also serve a nonlegitimate purpose, or indeed sometimes no real purpose at all — that is, they may be exclusionary in intent and/or effect, or merely the product of a quite parochial vision, or sometimes unduly harsh with little compensating public benefit — or merely inept." 1 Williams, *supra*, § 5.05 at 111.

The discretionary nature of zoning enforcement also lends itself to illegitimate exclusion. Communities often rely on complaints from neighbors to enforce zoning codes; and, as in this case, neighbors complain when they feel that their new neighbors are "undesirable." In particular, group homes for disabled people are likely to be singled out for enforcement of zoning codes: "From the local government perspective . . . the community residence or group home in a residential area is an anathema. Residents fear that these homes will depress property values and destroy neighborhood tranquility." Steinman, *supra*, at 2; *see also* General Accounting Office, *An Analysis of Zoning and Other Problems Affecting the*

Establishment of Group Homes for the Mentally Disabled App. 1 at 10 (Aug. 17, 1983) (listing concerns raised by neighbors of proposed group homes at public hearings).[9/] It has long been established that facially neutral zoning codes can be enforced in a discriminatory and therefore improper manner. *See, e.g., Yick Wo* v. *Hopkins*, 118 U.S. 356, 374 (1886); *State* v. *Vadnais*, 202 N.W.2d 657 (Minn. 1972); *Salt Lake County* v. *Kartchner*, 552 P.2d 136 (Utah 1976).

Occupancy codes, on the other hand, have not been subject to such criticism. Indeed, Justice Stevens, concurring in *Moore* v. *East Cleveland*, contrasted the potential for abuse inherent in "family"-based zoning codes with objective occupancy codes that do not depend on the family relationships of the occupants regulated. 431 U.S. 494, 521 & n.16 (1977). This is true, in part, simply because occupancy codes are inherently less malleable than use restrictions; they are defined in terms of numerical, objective criteria. More fundamentally, occupancy codes are not — as zoning codes are — based on principles of exclusion.

[9/] The source of the illegitimate animosity is of no consequence. If public officials perform an official act "simply in order to appease the discriminatory viewpoints of private parties, that act itself becomes tainted with discriminatory intent even if the decisionmaker personally has no strong views on the matter." *Association of Relatives and Friends of AIDS Patients* v. *Regulations & Permits Admin.*, 740 F. Supp. 95, 104 (D.P.R. 1990).

IV. THE PLAIN LANGUAGE OF THE FAIR HOUSING AMENDMENT ACT, READ IN THE CONTEXT OF THE HISTORICALLY DISTINCT EVOLUTION OF ZONING LAWS AND OCCUPANCY REQUIREMENTS, ESTABLISHES THAT SINGLE-FAMILY ZONING CODES ARE NOT RESTRICTIONS ON THE "MAXIMUM NUMBER OF OCCUPANTS" WITHIN THE MEANING OF THE STATUTORY EXEMPTION.

The historical evolution of zoning laws and occupancy requirements set forth above establishes three fundamental propositions: (a) zoning laws evolved out of a desire to exclude uses and insulate communities from outside influences; (b) occupancy requirements developed along with other housing code principles out of the separate desire to ensure the health and safety of residents of any given city or community, rather than to control land use in any given area; and (c) zoning laws have been frequently misused for illegitimate or discriminatory purposes, while housing codes, including occupancy requirements, have not.

Viewed in the context of this historical background and the distinct evolution of occupancy requirements versus zoning laws, the language of the FHAA exemption can have only one meaning. The exemption for restrictions on "the maximum number of occupants" is undoubtedly a reference to the near-century of housing code law addressing occupancy requirements — and *not* to zoning laws that might for one reason or another have some impact on occupancy. The plain language of the statutory exemption refers to occupancy restrictions — *not* zoning codes — and given the clear historical distinction between these two concepts, the plain language should be given effect.[10/] Indeed, this distinction is reflected in the fact that the FHAA explicitly applies to zoning practices. *See* 42 U.S.C. § 3610(g)(2)(C).

[10/] *See Toibb* v. *Radloff*, 501 U.S. 157, 160 (1991) (statutory interpretation begins with the plain language of the text).

When Congress exempted "restrictions . . . on occupants," it did so within the context of a longstanding recognition of the legitimate need for health and safety regulations concerning occupancy. And it acted against a background of stubbornly persistent discrimination arising out of community zoning laws (Part III, above) — problems that had simply not been presented by reasonable housing code provisions on occupancy. Thus, Congress chose a term that, as set forth above, has a meaning and historical context entirely distinct from the zoning requirements at issue in this case.[11/] Occupancy requirements have always been understood as being different from single-family zoning codes.

The statute's reference to occupany requirements, particularly considering the long-standing meaning and usage of that term, has nothing to do with whether or not the persons living in a dwelling are related. It is, instead, a recognition of the need for health and safety restrictions related to occupancy, not use. The exemption is written in terms of "restrictions" on the "maximum number" of persons in a dwelling — yet zoning requirements such as those at issue here impose no such "restriction" and would in fact permit an unlimited number of family members to live together in a single dwelling.

Of course, a single-family zoning requirement could, in the most indirect sense, have an impact on occupancy by tending to limit the number of people living in any one residence. But that cannot convert a single-family zoning requirement into an "occupancy" restriction. Most obviously, the Edmonds restriction only describes *who* may live in a house together, not *how many* may live there. That is not an occupancy requirement.

This conclusion finds clear support in the historical thrust of occupancy restrictions. Because many new immigrants were called

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11/ *See Green*, 490 U.S. at 528 (statutory interpretation must make reference to "the surrounding body of law into which the provision must be integrated").

upon to house their relatives who followed them to the United States, occupancy restrictions have never had any regard for family ties. L.M. Friedman, *supra*, at 45. An overcrowded dwelling is a threat to health and safety, regardless of whether it is overcrowded with family members or the unrelated.

Edmonds contends, however, that its zoning ordinance should be considered a "reasonable" restriction on "occupancy" because it is constitutional. *See*, *e.g.*, Petitioners' Brief on the Merits at 11. But that would read the adjective "reasonable" out of all proportion: if a single-family zoning code is not an "occupancy restriction" at all, it cannot be called a "reasonable" restriction simply because it is constitutional. The statutory reading does not depend on whether, as a matter of constitutional law, Edmonds was permitted to implement this zoning ordinance. The far more straightforward reading of the term "reasonable" is that Congress intended to permit those maximum occupancy standards that were reasonably related to legitimate health and safety concerns. Any zoning or use restriction, as here, might have some indirect impact on "occupancy" — but that does not make a zoning law into a "reasonable" occupancy restriction.

The plain language of the FHAA, particularly when read in light of the clear historical distinctions between occupancy requirements and zoning laws, necessarily resolves the issue before the Court. And, if more is needed, that conclusion finds overwhelming support in the legislative history and underlying purposes of the FHAA.

The Committee reports accompanying the FHAA show an unequivocal intent to attack zoning practices inconsistent with its remedial goals.[12/] The House Report stated: "The Committee

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12/ *See Garcia* v. *United States*, 469 U.S. 70, 76 (1984) (Rehnquist, J.) (Committee reports are the authoritative source for the legislature's intent) (quoting *Zuber* v. *Allen*, 396 U.S. 168, 186 (1969)).

intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices, including "otherwise neutral rules" enforced in a way that "discriminates against people with disabilities." House Report No. 711, 100th Cong., 2d Sess. (1988) at 24, J.A. 148. With respect to the exemption for maximum occupancy restrictions, the Report refers directly to restrictions of the traditional kind:

> A number of jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit. Reasonable limitations by governments would be allowed to continue, as long as they were applied to all occupants, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status.

H.R. 100-711, *supra*, at 31, J.A. 155. With this clearly expressed purpose, and given the longstanding distinction between maximum occupancy codes and zoning restrictions, Congress could not have intended to exempt the latter from the FHAA. This would be contrary to the statutory language, and to the underlying purpose of preventing illegitimate or discriminatory zoning practices.

Reading the statute in the way that Edmonds suggests would lead to a nonsensical result that Congress could not have intended: it would permit the exclusion of group residences like the Oxford House from the very communities best suited for them. At the outset, to receive federal funds, group homes for recovering substance abusers *must* have six or more residents who agree to observe by the Oxford House rules (no use of drugs or alcohol, no disruptive behavior, and regular payment of rent). *See* 42 U.S.C. 300x-25 (Supp. IV 1992).[13/] The entire predicate of the group

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[13/] The cited statute is the current version of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4202, 42 U.S.C. 300-4xa (repealed and recodified at 42 U.S.C. 300x-25). Enacted in the same year (continued...)

home is to provide collective support: "After completion of a rehabilitation program, it is crucial for recovering alcoholics and substance abusers to have a supportive, drug and alcohol-free living environment. The support obtained by being in a group of other recovering addicts substantially increases an individual's chances for recovery." *Oxford House, Inc.* v. *Township of Cherry Hill*, 799 F. Supp. 450, 456 (D.N.J. 1992) (granting a preliminary injunction against enforcement of single-family zoning ordinance against residents of an Oxford House). To be effective, such group homes must be located in a stable, residential neighborhood — the very neighborhoods most likely to be zoned single-family residential. *See generally* Brief of the AAMR. Group homes, then, would be caught between the municipalities' upper limits, the federal government's lower limits, and the basic requirements of their mission: they would be forced to compromise their goals in order to exist. This is not a result consonant with a statute aimed at doing away with "land-use regulations . . . that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community." H.R. 100-711, *supra*, at 24, J.A. 148.

CONCLUSION

Zoning codes and occupancy restrictions have distinct histories and purposes. Zoning restricts uses, and while it has many important and legitimate goals, it has a long history of discriminatory misuse. Occupancy restrictions, on the other hand, are more objective standards; they are aimed at health and safety concerns; and they have not in the past been misused for illegitimate purposes. In enacting the FHAA against this background, Congress cannot possibly have intended to give municipalities uncontrolled use of single-family zoning — a recognized tool of discrimination

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[13/](...continued)
as the FHAA, this Act demonstrates congressional support for group homes for recovering substance abusers by providing federal block grants to encourage establishment of Oxford Houses and other group homes modeled on the same approach.

against disabled people who require congregate living arrangements. This is reflected plainly in the statutory language that exempts only occupancy restrictions, a class of restrictions with a longstanding place in health and safety regulation distinct from the zoning laws that Congress sought to address in the FHAA. The statutory exemption must be read to apply only to traditional occupancy restrictions and not to single-family zoning provisions. The judgment of the Court of Appeals should be affirmed.

Respectfully Submitted,

TIMOTHY C. HESTER
ROBERT A. LONG JR.*
CHRISTINA T. UHLRICH
Covington & Burling
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-6000

January 23, 1995

*Counsel of Record